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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/779,402	02/13/2004	Steven J. McCarthy	ID-504 (80226)	2799

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EXAMINER
NGUYEN, MINH CHAU

ART UNIT	PAPER NUMBER
2145	

NOTIFICATION DATE	DELIVERY MODE
08/22/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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	Application No.	Applicant(s)
Office Action Summary	10/779,402	MCCARTHY ET AL.
	Examiner	Art Unit
	MINH-CHAU NGUYEN	2145

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 July 2008*.
2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3,5-10,12-15,17,18,20 and 21* is/are pending in the application.
   4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) *1-3,5-10,12-15,17,18,20 and 21* is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
   a)☐ All b)☐ Some * c)☐ None of:
      1.☐ Certified copies of the priority documents have been received.
      2.☐ Certified copies of the priority documents have been received in Application No. _____.
      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)
1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
   Paper No(s)/Mail Date *5/23/08*.
4) ☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

This action is responsive to the amendment of the applicant filed on 07/30/08.

Claims 1-3,5-10,12-15,17-18,20-21 are presented for further examination.

Information Disclosure Statement

The information disclosure statements (IDS) submitted on 05/23/08 is being

considered by the Examiner.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 1-3,5-7,9-10,12-15,17-18,20-21 are rejected under 35 U.S.C. 103(a) as

   being unpatentable over Albert et al. (Albert) (US 6,970,913 B1) and further in

   view of Richter et al. (Richter) (US 2003/0046396 A1).

2. Claim 1, Albert teaches a communications system comprising:

   a plurality of servers (i.e. servers 1-3) connected together in a network (i.e.

   network 210) for processing a plurality of different job types (i.e. processing

   incoming and outgoing packets or handling different connections) having

   respective same resource usage characteristics (i.e. usage of processing

capacity) associated therewith (Col. 6, L. 51-55; and Col. 13, L. 60-65; and Col.

30, L. 14-31; and Col. 31, L. 53-59);

each server determining a respective health metric thereof based upon at

least one job being processed (i.e. determining a usage of processing capacity

for each of the virtual machine that is being implemented) thereby and weighting

the health metric (i.e. weighting the usage of processing capacity) based upon

the respective resource usage characteristic of the at least one job (i.e. at least

one virtual machine) (figure 14; and Col. 30, L. 1-31; and Col. 31, L. 53-59; and

Col. 32, L. 49-51); and

said servers mapping the weighted health metrics (i.e. weights) for same

resource usage characteristics to a common scale (i.e. a common level) (Col. 3,

L. 51-58; and Col. 30, L. 1-31, L. 61-Col. 31, L. 3; and

a dispatcher (i.e. service manager 1140 in figure 11A) for collecting the

commonly scaled weighted health metrics (i.e. level of load as a weight factor

which is a number of connections being serviced by each server) (i.e. weights)

from said servers (i.e. servers 1-4) and distributing jobs to said servers based

thereon (figure 14; and Col. 3, L. 59-Col. 4, L. 3; and Col. 30, L. 1-49; and Col.

31, L. 53-Col. 32, L. 51).

Albert fails to teach different resource usage characteristics. However,

Richter, in the same field of endeavor having closely related objectivity, teaches

different resource usage characteristics (paragraph 368,372,374-375,380).

Thus, it would have been obvious to one of ordinary skill in the art at the

time the invention was made to have incorporated Richter's teachings of different

resource usage characteristics, in the teachings of Albert in load balancing using

distributed forwarding agents with application based feedback for different virtual

machines, for provide an advantage for generating load balancing for processing

engines.

3. Claim 2, Albert and Richter disclose the invention substantially as claimed.

   Richter teaches wherein the resource usage characteristics comprise at least

   one processing utilization characteristic and at least one input/output utilization

   characteristic (paragraph 368,372,374-375,380).

4. Claim 3, Albert and Richter disclose the invention substantially as claimed. Albert

   teaches further comprising a knowledge base for cooperating with said

   dispatcher (i.e. service manager) for storing the weighted health metrics (i.e.

   weights) (Col. 31, L. 49-59).

5. Claim 5, Albert and Richter disclose the invention substantially as claimed. Albert

   teaches wherein said servers provide completed job results to said dispatcher

   (i.e. service manager), and wherein the weighted health metrics are provided to

said dispatcher with the completed job results (i.e. "the feedback messages from

the real machines is that the messages somehow express the level of load on

the real machine as a result of handling connections", and "a process executed

on a server for determining a weight to be sent to the service manager in a

feedback message…Next, in a step 1206, the server determines the remaining

processing capacity". From these quotation notes, it does teach the weights are

sent to the service manger with the completed job/process results) (Col. 30, L. 1-

31).

6. Claim 6, Albert and Richter disclose the invention substantially as claimed. Albert

teaches further comprising at least one load generator (i.e. load balance

engine/algorithm) for generating the jobs for said servers and communicating the

jobs to said dispatcher; and wherein said dispatcher further provides the

completed job results to said at least one load generator (Col. 3, L. 59-Col. 4, L.

3; and Col. 8, L. 57-67; and Col. 9, L. 16-22; and Col. 11, L. 56-65; and Col. 12,

L. 46-49; and Col. 30, L. 1-31).

7. Claim 7, Albert and Richter disclose the invention substantially as claimed. Albert

teaches wherein said dispatcher periodically polls said servers for the weighted

health metrics (Col. 30, L. 43-52).

8. Claim 9, Albert teaches a load distributor for a plurality of servers (i.e. servers 1-
   3) connected together in a network (i.e. network 210) for processing a plurality of
   different job types (i.e. process incoming and outgoing packets) having
   respective same resource usage characteristics (i.e. usage of processing
   capacity) associated therewith (Col. 6, L. 51-55; and Col. 13, L. 60-65; and Col.
   30, L. 14-31; and Col. 31, L. 53-59), and each server determining a respective
   health metric (i.e. level of load as a weight factor which is a number of
   connections being serviced by each server) thereof based upon at least one job
   being processed thereby and weighting the health metric (i.e. weight) based
   upon the respective resource usage characteristic of the at least one job (i.e.
   usage of processing capacity) (figure 14; and Col. 30, L. 1-31; and Col. 31, L. 53-
   59; and Col. 32, L. 49-51), the load distributor comprising:

   a dispatcher (i.e. service manager 1140 in figure 11A) for collecting the
   weighted health metrics (i.e. weights) from the servers (i.e. servers 1-4) and
   distributing jobs to the servers based thereon (figure 14; and Col. 3, L. 59-Col. 4,
   L. 3; and Col. 30, L. 1-49; and Col. 31, L. 53-Col. 32, L. 19); and

   said servers mapping the weighted health metrics (i.e. weights) for same
   resource usage characteristics to a common scale (i.e. a common level) (Col. 3,
   L. 51-58; and Col. 30, L. 1-31, L. 61-Col. 31, L. 3; and

a knowledge base for cooperating with said dispatcher (i.e. service

manager) for storing the commonly scaled weighted health metrics (i.e. weights)

(Col. 31, L. 49-59).

Albert fails to teach different resource usage characteristics. However,

Richter, in the same field of endeavor having closely related objectivity, teaches

different resource usage characteristics (paragraph 368,372,374-375,380).

Thus, it would have been obvious to one of ordinary skill in the art at the

time the invention was made to have incorporated Richter's teachings of different

resource usage characteristics, in the teachings of Albert in load balancing using

distributed forwarding agents with application based feedback for different virtual

machines, for provide an advantage for generating load balancing for processing

engines.

9. Claim 14, Albert teaches a job distribution method for a plurality of servers (i.e.

servers 1-3) connected together in a network (i.e. network 210), the servers for

processing a plurality of different job types (i.e. process incoming and outgoing

packets) having respective different resource usage characteristics (i.e. usage of

processing capacity) associated therewith (Col. 6, L. 51-55; and Col. 13, L. 60-

65; and Col. 30, L. 14-31; and Col. 31, L. 53-59), the method comprising:

determining a respective health metric of each server (i.e. determining

level of load as a weight factor which is a number of connections being serviced

by each server) based upon at least one job being processed thereby and

weighting the health metric (i.e. weight) based upon the respective resource

usage characteristic of the at least one job (i.e. usage of processing capacity)

(figure 14; and Col. 30, L. 1-31; and Col. 31, L. 53-59; and Col. 32, L. 49-51); and

mapping the weighted health metrics (i.e. weights) for same resource

usage characteristics to a common scale (i.e. a common level) (Col. 3, L. 51-58;

and Col. 30, L. 1-31, L. 61-Col. 31, L. 3; and

distributing jobs to the servers based upon the commonly scaled weighted

health metrics (figure 14; and Col. 3, L. 59-Col. 4, L. 3; and Col. 30, L. 1-49; and

Col. 31, L. 53-Col. 32, L. 19).

Albert fails to teach different resource usage characteristics. However,

Richter, in the same field of endeavor having closely related objectivity, teaches

different resource usage characteristics (paragraph 368,372,374-375,380).

Thus, it would have been obvious to one of ordinary skill in the art at the

time the invention was made to have incorporated Richter's teachings of different

resource usage characteristics, in the teachings of Albert in load balancing using

distributed forwarding agents with application based feedback for different virtual

machines, for provide an advantage for generating load balancing for processing

engines.

10. Claims 10,12-13 are corresponding apparatus claims of system claims 2,5,7.

Therefore, they are rejected under the same rationale.

11. Claim 15 is corresponding method claim of system claim 2. Therefore, it is

rejected under the same rationale.

12. Claims 17-18,20-21 are corresponding computer-readable medium claims of

apparatus claims 9-10,12-13. Therefore, they are rejected under the same

rationale.

13. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Albert

and Richter as applied to claim 1 above, and further in view of Ross et al. (Ross)

(US 6,263,212B1).

14. Claim 8, Albert and Richter are relied upon for the disclosure set forth in the

previous rejection. Albert teaches the jobs relate to IP packet processing (Col. 6,

L. 51-63; and Col. 7, L. 31-39).

Albert and Richter fail to teach the jobs relate to electronic mail (e-mail)

processing. However, Ross, in the same field of endeavor having closely related

objectivity, teaches the jobs relate to electronic mail (e-mail) processing (Col. 6,

L. 1-10).

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated Ross's teachings of the jobs relate to electronic mail (e-mail) processing, with Richter's teachings of different resource usage characteristics, in the teachings of Albert in load balancing using distributed forwarding agents with application based feedback for different virtual machines, for provide an advantage for generating load balancing for email processing.

Response to Arguments

Applicant's arguments with respect to claims 1-3,5-10,12-15,17-18,20-21 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MINH-CHAU NGUYEN whose telephone number is (571) 272-4242. The examiner can normally be reached on 7AM-3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JASON CARDONE can be reached on (571) 272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Patrice Winder/
Primary Examiner, Art Unit 2145

/M. N./
Examiner Minh-Chau Nguyen, Art Unit 2145